

HAWAII ADMINISTRATIVE RULES

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 3

DISABILITY COMPENSATION DIVISION

CHAPTER 10

WORKERS' COMPENSATION

SUBCHAPTER 1

GENERAL PROVISIONS

§12-10-1 Definitions. As used in this chapter:

"Able to resume work" means an industrially injured worker's injury has stabilized after a period of recovery and the worker is capable of performing work in an occupation for which the worker has received previous training or for which the worker had demonstrated aptitude. If the worker is unable to perform offered light work, temporary total disability benefits shall not be discontinued based solely on such inability to perform or continue light work.

"Appellate board" shall be as defined in section 386-1, HRS.

"Adjuster" means an individual, partnership, corporation, or others, who is in the business of adjusting workers' compensation insurance claims for a self-insured employer, insurer, or others.

"Attending physician" means a physician who is primarily responsible for the treatment of a work injury. There shall not be more than one attending physician. In the event an injured employee is treated by more than one physician in accordance with section 12-15-40, the employee shall designate a physician as the attending physician.

"Compensation" shall be as defined in section 386-1, HRS.

"Covered employment" shall be as defined in section 386-1, HRS.

"Department" shall be as defined in section 386-1, HRS.

"Director" shall be as defined in section 386-1, HRS.

"Disability" shall be as defined in section 386-1, HRS.

"Disqualified health care provider" means a health care provider barred under section 386-27, HRS, from providing health care services to a person who has suffered a work injury.

"Employee" shall be as defined in section 386-1, HRS.

"Employee in comparable employment" shall be as defined in

section 386-1, HRS.

"Employee's designated representative", for the purpose of section 386-31(b)(1), HRS, means the representative of record of the employee, such as the employee's attorney or union representative. As used in this chapter, employee shall include the employee's representative unless clearly indicated otherwise.

"Employer", as defined in section 386-1, HRS, includes a self-insured employer or the self-insured employer's adjuster or designated representative unless clearly indicated otherwise, the insurer of an employer, or an employer who has failed to comply with section 386-21, HRS.

"Employer's designated representative", for the purpose of section 386-31(b)(1), HRS, shall include:

- (1) A self-insured employer's adjuster or attorney of record;
- (2) An insured employer's insurer, adjuster, or attorney of record; or
- (3) The adjuster or attorney of record of an uninsured employer.

"Employment" shall be as defined in section 386-1, HRS.

"Employment for personal, family, or household purposes" includes but is not limited to:

- (1) Services performed by an individual in constructing, repairing, or maintaining employer's private place of abode or dwelling.
- (2) Domestic, valet, custodial, or babysitting services performed by an individual for an employer in or about a private place of abode.
- (3) Chauffeuring or personal safeguarding services performed by an individual for an employer or members of the employer's family.

"Full-time student" means an individual who is considered a regular full-time student by the educational institution at which the individual is enrolled or registered.

"Hanai child" means a child who, prior to the industrial injury, is taken permanently to reside, be educated, and reared by someone other than the natural parents, traditionally a grandparent or other relative.

"Health care provider" shall be as defined in section 386-1, HRS.

"Higher wages" means a higher regular rate of pay per unit of time.

"Insured employer" means an employer who obtains workers' compensation insurance from an insurer pursuant to section 386-121(a)(1), HRS.

"Insurer" means any insurance company authorized by the insurance commissioner to underwrite, sell, or transact workers'

compensation insurance in the State of Hawaii.

"Medical care", "medical services", or "medical supplies" shall be as defined in section 386-1, HRS.

"Medical stabilization" means that no further improvement in the injured employee's work-related condition can reasonably be expected from curative health care or the passage of time. Medical stabilization is also deemed to have occurred when the injured employee refuses to undergo further diagnostic tests or treatment which the health care provider believes will greatly aid in the employee's recovery.

"Personal injury" shall be as defined in section 386-1, HRS.

"Physician" shall be as defined in section 386-1, HRS.

"Self-insured employer" means an employer authorized by the director to comply with chapter 386, HRS, pursuant to section 386-121(a)(2) or (3), HRS.

"Sixty-six and two-thirds per cent", as required by sections 386-31 and 386-32, HRS, means the factor .6667.

"State average weekly wage" shall be as defined in section 386-1, HRS.

"This statute" or "the statute" means chapter 386, HRS, unless otherwise specified.

"Total disability" shall be as defined in section 386-1, HRS.

"Trade, business, occupation, or profession" shall be as defined in section 386-1, HRS.

"Uninsured employer" means an employer who has failed to comply with section 386-121, HRS.

"Wages" shall be as defined in section 386-1, HRS.

"Week" or "workweek" means a fixed and regularly recurring period of seven consecutive days.

"Work injury" shall be as defined in section 386-1, HRS.
[Eff: 4/30/81; am 12/17/82; am 11/29/85] (Auth: HRS §§386-27, 386-72) (Imp: HRS §§386-1, 386-2, 386-3, 386-21, 386-24, 386-25, 386-27, 386-31, 386-32, 386-42, 386-43, 386-51, 386-71, 386-91, 386-121)

§12-10-2 Negotiation for benefit coverage. (a) The collective bargaining agreement shall not deny workers' compensation benefits to any employee who would be eligible for workers' compensation benefits under chapter 386, HRS.

(b) The collective bargaining agreement shall not diminish the entitlement of an employee to compensation payments for benefits such as temporary total or partial disability, permanent total or partial disability, vocational rehabilitation, death benefits, funeral and burial benefits, benefit adjustments, or medical treatment fully paid by the employer.

(c) Provision for medical care and services and treatment

plan and medical fee schedule requirements prescribed under sections 386-21 and 386-26, HRS, and related Hawaii administrative rules may be collectively bargained provided that reasonably needed medical care, services, and supplies, as the nature of the injury requires, are provided.

(d) Notwithstanding the medical fees provided by chapter 386 and related Hawaii administrative rules, fees for medical services may be collectively bargained.

(e) The special compensation fund established under section 386-151, HRS, and employers not a party to the collective bargaining agreements are not bound by provisions of the agreement. Disagreements involving the special compensation fund and employers not a party to the collective bargaining agreement will be resolved according to provisions under chapter 386, HRS.

(f) Employers, groups of employers, and appropriate bargaining agreements may be required to provide the director with data to assess the effectiveness and efficiency of such agreements. This data may include:

- (1) Number of employees covered by the agreements;
- (2) Number of claims filed;
- (3) Average cost per claim;
- (4) Names of injured employees subject to collective bargaining agreements; and
- (5) Other pertinent information.

(g) Every employer, group of employers, or bargaining unit proposing to establish any program permitted under section 386-3.5, HRS, shall submit to the director at least ninety calendar days prior to the effective date of the collective bargaining agreement:

- (1) A certified executed copy of the agreement signed and notarized by all parties;
- (2) A listing of all employers subject to provisions of this agreement;
- (3) Number of employees covered by the agreement; and
- (4) Other pertinent information.

(h) Additions or deletions of employers subject to the collective bargaining agreement shall be filed with the director at least ten calendar days prior to the effective date of the addition or deletion.

(i) Any modifications to the approved collective bargaining agreement must be filed with the director for approval at least ninety calendar days prior to the effective date of the modification.

(j) The employer, group of employers, or bargaining unit shall notify the director in writing within ninety calendar days of intent to terminate the approved collective bargaining agreement. The employer, group of employers, or bargaining unit

shall notify all employees covered under the collective bargaining agreement of the effective date of termination. The employer, group of employers, or bargaining unit shall also notify all employees with claims pending further action that their claims will be subject to the requirements of chapter 386, HRS, unless otherwise provided in the collective bargaining agreement.

(k) No compromise in regard to a claim for compensation covered by an approved collective bargaining agreement shall be valid unless it is approved by decision of the director as conforming to chapter 386, HRS, and made a part of the decision. [Eff: 11/22/97] (Auth: HRS §386-72) (Imp: HRS §386-3.5)

§§12-10-3 to 12-10-20 (Reserved)

SUBCHAPTER 2

COMPENSATION

§12-10-21 Disabilities. (a) Impairment rating guides issued by the American Medical Association, American Academy of Orthopedic Surgeons, and any other such guides which the director deems appropriate and proper may be used as a reference or guide in measuring a disability.

(b) If an employee is unable to complete a regular daily work shift on account of a work injury, the employee shall be deemed totally disabled for work for that day. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §§386-31, 386-32, 386-33, 386-34)

§12-10-22 Annual proof of dependency. Alien dependents not residing in the United States at the time of the injury or leaving the United States subsequently shall furnish the liable employer annually with a verified document certifying the continuance of dependency on a form prescribed by the director. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §386-42)

§12-10-23 Computation of average weekly wages. Except as otherwise provided by section 386-51, HRS, an injured employee's average weekly wage shall be computed as follows:

- (1) If the employee is employed on an hourly basis and has no overtime or other earnings during the one-year period prior to the work injury, the hourly rate shall be multiplied by the number of hours worked in a workweek;
- (2) If the employee is employed solely on the basis of a

predetermined and fixed monthly salary and has no overtime or other earnings during the one-year period prior to the work injury, the monthly salary shall be multiplied by twelve and the product divided by fifty-two;

- (3) If an employee is employed solely on the basis of a predetermined and fixed semi-monthly salary and has no overtime or other earnings during the one-year period prior to the work injury, the semi-monthly salary shall be multiplied by twenty-four and the product divided by fifty-two;
- (4) If the employee is employed on the basis of:
 - (A) A predetermined and fixed monthly, semi-monthly, or weekly salary and in addition receives other wages such as, but not limited to, commissions, gratuities (tips), bonuses, overtime pay, hourly or daily pay; or
 - (B) Incentive earnings only (i.e. commissions, piecework pay); or
 - (C) An hourly or daily rate and in addition receives other wages such as, but not limited to, commissions, gratuities (tips), bonuses or overtime pay; the employee's total earnings for the twelve months preceding the work injury shall be divided by fifty-two; provided that if the employee at the time of the injury was employed at higher wages than any other period of the preceding twelve months and had earned overtime pay during the twelve-month period, the average weekly overtime hours obtained by dividing the total overtime hours worked during the twelve-month period by fifty-two shall be multiplied by the overtime hourly rate based on the higher wages, and the product shall be added to the weekly straight time pay obtained by multiplying the straight time hourly rate based on the higher wages by the total number of straight time hours normally worked by the employee in a workweek.
- (5) If the employee is under twenty-five years of age and sustains a work injury causing permanent disability or death and:
 - (A) If employed in an occupation or job classification as an apprentice or trainee under the terms of an apprenticeship or on-the-job training program, the average weekly wages shall be calculated on the basis of the rate of pay to be received at age

- twenty-five under the apprenticeship or trainee agreement, plan, or contract. An apprenticeship or on-the-job training program is one which is registered with the department, expressed in writing in a collective bargaining agreement or an employment contract, or one which the director determines bears substantial similarities to that of an on-the-job or career training program based on a mutual employer-employee understanding; or
- (B) Is employed in an occupation or job classification and is not an apprentice or trainee, the average weekly wage shall be determined on the basis of the median rate of pay of the lowest and highest rate of pay of twenty-five year old employees employed in a similar occupation in employment by the worker's employer. If there are no twenty-five year old employees in a similar occupation with the same employer, the median rate of pay shall be determined on the basis of twenty-five year old employees in a similar occupation in employment with another employer in this State. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §386-51)

§12-10-24 Credit for voluntary payments. For the purpose of section 386-52(a), HRS, an employer may, with the approval of the director, deduct from an amount payable as compensation any advance payments made to the injured employee if the employee had been notified in writing at the time the advance was made that the payments were in lieu of compensation. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §386-52)

§12-10-25 Travel reimbursement. An employee who is required to obtain medical treatment shall use public conveyances whenever possible and shall be entitled to travel reimbursement. If the employee is unable to use public conveyances because of a physical condition, the nature of the injury, or geographical location, travel reimbursement by the most direct route shall be allowed. When such visits are made before or after work, or during working hours, only the excess miles outside of the normal route shall be allowed. Reimbursement for mileage shall be in accordance with Hawaii state government standards. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §386-21)

§12-10-26 Filing of notice of intent to terminate temporary total disability benefits. Written notice of intent to terminate payment of weekly temporary total disability benefits shall be

sent by regular mail to the director and the employee in every case where the employer has determined that the employee is "able to resume work". In the event the employee has returned to work, a notice need not be mailed and temporary total disability payments may be automatically stopped as of the date prior to the return-to-work day. [Eff: 4/30/81; am 11/29/85] (Auth: §386-72) (Imp: HRS §386-31)

§12-10-27 Benefit rate adjustment for permanently and totally disabled worker. (a) Pursuant to section 386-35, HRS, insurers and self-insured employers shall make benefit rate adjustments to workers who are permanently and totally disabled. Insurers and self-insured employers shall be entitled to reimbursement from the special compensation fund for the supplemental amounts paid.

(b) Claim for reimbursement shall be submitted on a form prescribed by the director. The reimbursement request shall include claimant's name, social security number, date of accident, age, case number, weekly compensation rate, and the amount of adjustment paid to the claimant.

(c) The request for reimbursement shall be submitted to the department annually by January 31 of the subsequent calendar year. The request shall be audited by the department and the appropriate sum paid to the insurer or self-insured employer by June 30 of the year the request was filed. Reimbursement requests received after January 31 may be paid by the department upon showing of good cause for the late filing. [Eff: 4/30/81; am 12/8/94] (Auth: HRS §386-72) (Imp: HRS §386-35)

§12-10-28 Subsequent injuries which would increase disabilities under section 386-33, HRS. (a) Within sixty days after medical care is prescribed and refused, or when curative medical care and rehabilitation is exhausted, and it is not likely the employee will be further rehabilitated or restored to preinjury status, the employee shall be deemed to have reached maximum medical stabilization. The extent of medical impairment preexisting the work injury, shall be assessed by a physician pursuant to section 12-10-21(a). The director shall convene a hearing to determine the temporary total disability period, the extent of permanent disability, and the responsibilities of the employer and the special compensation fund.

(b) In determining an employer's liability of one hundred four weeks of disability pursuant to section 386-33(a)(1) and (2), HRS, the employer shall receive no credit for compensation paid to an employee during periods of temporary total disability. The employer shall receive credit for all compensation paid to an employee on account of permanent partial disability resulting

from the injury as against the liability of one hundred four weeks of permanent partial or permanent total disability.

(c) In determining an employer's liability of one hundred four weeks of disability pursuant to section 386-33(a)(3), HRS, the employer shall receive no credit for compensation paid to an employee on account of temporary total, temporary partial, permanent partial, or permanent total disability.

(d) The product of one hundred four or thirty-two multiplied by the employee's weekly benefit rate pursuant to section 386-31(a), HRS, on the date of injury shall be used to determine credit for one hundred four or thirty-two weeks for disabilities covered by section 386-32(a) HRS.

(e) The product of thirty-two multiplied by the employee's weekly benefit rate pursuant to section 386-31(a), HRS, on the date of injury shall be used to determine credit for thirty-two weeks for death benefits covered by sections 386-41 through 386-43, HRS. The product of one hundred four multiplied by the dependents' weekly benefit rate pursuant to sections 386-41 and 386-43, HRS, shall be used to determine credit for one hundred four weeks for death benefits covered by sections 386-41 through 386-43, HRS.

(f) In the case of part-time employment, credit for thirty-two and one hundred four weeks shall be calculated as if the employee had been a full-time employee in accordance with section 386-51, HRS.

(g) In computing the offset for the amount awarded by a prior compensable injury under section 386-33(a)(1), HRS, the employer is responsible for documenting the amount awarded for the prior compensable injury. In cases involving the special compensation fund, the entire permanent partial disability award will first be offset by the amount awarded for the prior compensable injury. The employer will then be liable for one hundred four weeks and the special compensation fund will be liable for the balance.

(h) The special compensation fund shall not be liable for compensation if the subsequent injury is so severe that it alone would have caused permanent total disability or death. [Eff: 12/17/82; am 2/11/91; am 11/22/97] (Auth: HRS §386-72) (Imp: HRS §§386-31, 386-32, 386-33, 386-41, 386-42, 386-43, 386-51)

§12-10-29 Payments from the special compensation fund. The special compensation fund shall be responsible for temporary total disability and medical benefits where provided by statute and when ordered by the director. [Eff: 12/14/82; am 12/8/94] (Auth: HRS §386-72) (Imp: HRS §§386-21, 386-23.5, 386-31, 386-32, 386-51.5, 386-56)

§12-10-30 Documentation of claims. (a) If an employer denies compensability of a claim and the employee disagrees, the employee shall file form WC-5 which shall be provided to the employee by the department. The WC-5 shall authorize the release of medical documents pertaining to or having a bearing on the injury.

(b) If an employer fails to file form WC-1 and the employee wishes to pursue a claim, the employee shall file form WC-5 which shall be provided by the department.

(c) If a dependent of a deceased claimant wishes to pursue a claim, the dependent shall file form WC-5a, which shall be provided by the department. The WC-5a shall authorize the release of medical documents pertaining to or having a bearing on the injury.

(d) Any request for reopening of any claim pursuant to section 386-89(c), HRS, shall be accompanied by medical information or any other substantial evidence showing a change in or of a mistake in a determination of fact related to the physical condition of the injured employee. [Eff: 12/17/82; am 12/8/94] (Auth: HRS §§386-71, 386-72, 386-82) (Imp: HRS §§386-21, 386-81, 386-89)

§12-10-31 Liability of third person. (a) Should any action be filed, arbitration commenced, or claim be made to recover damages pursuant to section 386-8, HRS, the party or parties in interest shall within ten calendar days notify the director in writing and all other parties of interest with pertinent details as the action, arbitration, or claim continues.

(b) The party or parties of interest shall obtain written consent of both employer and employee and file with the director within thirty calendar days of execution a final copy of the claim-dispositive document, release, settlement, court order, waiver, dismissal, arbitration award, or judgment.

(c) The director may hold a hearing at the director's discretion or on application of a party of interest to determine whether or not the employer has an obligation to make further compensation payments including reimbursements and credits against sums recovered from any third party. [Eff: 12/17/82; am 11/29/85; am 12/8/94] (Auth: HRS §386-72) (Imp: HRS §386-8)

§12-10-32 Commutation of benefits. (a) Pursuant to section 386-54, HRS, the director shall require the employee or the dependents of the employee to file a request for commutation and present evidence to support such request.

(b) The employer, upon written notification of approval of commutation of payments, shall pay those benefits forthwith unless the employer can prove undue hardship. Undue hardship

requests shall be filed with the director within ten calendar days after mailing of the commutation request with supporting documents.

(c) Commutation shall not be approved from benefits due from the special compensation fund or benefits due from a permanent total disability award. [Eff: 12/17/82] (Auth: HRS §§386-54, 386-72) (Imp: HRS §386-54)

§12-10-33 Special compensation fund; notification of pre-existing disabilities. (a) In any case, including death, where an employer believes that section 386-33, HRS, applies, the employer shall give the director written notice no later than thirty calendar days after the date of the initial rating report indicating evidence of pre-existing disability. The notice shall state the reasons underlying the employer's belief that section 386-33, HRS, applies and shall include a copy of the rating report or the final decision of the director or the appellate board indicating evidence of the pre-existing disability. Upon good cause shown, the director may permit the employer to file the written notice after the expiration of the time period. Failure to file a notice in accordance with this section shall subject the employer to liability for all benefits.

(b) If the employer files a notice without proper documentation or evidence supporting the applicability of section 386-33, HRS, the director may order the employer to reimburse the special compensation fund for cost and fees which the fund may incur during the proceedings of the injury.

(c) Any employer who accepts all liability for benefits due an injured employee should pre-existing disability combined with the injury result in a greater disability need not file notice.

(d) Benefits due an injured employee pursuant to section 386-33, HRS, shall be paid by the employer or the special compensation fund, or both. [Eff: 11/29/85; am 2/11/91; am 12/8/94] (Auth: HRS §386-72) (Imp: HRS §386-33)

§12-10-34 Controverted case payments. When only the question of liable employer in an industrial injury is to be settled and temporary disability benefits remain unpaid, the last employer shall pay seventy-five per cent of the weekly benefits. The payments shall be made without a decision of the director. When a liability determination is made, the liable employer, if not the last employer, shall reimburse the last employer. [Eff: 11/29/85] (Auth: HRS §386-72) (Imp: HRS §386-31)

§§12-10-35 to 12-10-60 (reserved)

SUBCHAPTER 3

ADMINISTRATION

§12-10-61 Filing of report. (a) All reports required to be filed pursuant to chapter 386, HRS, and this chapter shall be filed at the office of the disability compensation division, department of labor and industrial relations, Honolulu, Hawaii, except that reports of injuries occurring in all political subdivisions, except the city and county of Honolulu, shall be filed at the district office of the department in the county in which the injury occurred.

(b) Any report or form provided by the director and required to be filed at the Honolulu office of the disability compensation division shall be the original; and any such report or form required to be filed at the district offices of the department shall be the original and one legible copy.

(c) All reports or forms required to be filed pursuant to chapter 386, HRS; and this chapter shall be written in ink or typewritten and shall be signed in ink. The signature of the person signing the report or form constitutes a certification that the person has read the report or form and that, to the best of the individual's knowledge, information, and belief, all information contained in the report or form is true.

(d) In computing any period of time prescribed by chapter 386, HRS, and this chapter, the day of the act, event, or default, after which the designated period of time is to run, shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday in the State, in which event this period shall run until the next day which is neither a Saturday, Sunday, nor a holiday. A half-holiday shall be considered as other days and not a holiday. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §§386-95, 386-96)

§12-10-62 Public records. (a) The term "public records" as used in this chapter is defined as in section 92-1, HRS, and shall include all rules, regulations, written statements of policy or interpretation formulated, adopted, or used by the director regarding the administration and application of chapter 386, HRS, all industrial injury case files, all final opinions, decisions and orders, and any other material on file in the office of the disability compensation division unless accorded confidential treatment pursuant to statute, administrative rule, or determined by the director to be in the best interest and welfare of a claimant.

(b) All public records shall be available for inspection in the office of the disability compensation division and the department's district offices during established office hours.

(c) Public records printed or reproduced by the director in quantity shall be given to any person requesting same and paying the cost thereof. Photocopies of public records shall be made and given to any person upon request and upon payment of the cost thereof, and certified copies of extracts from public records shall also be given upon request and upon payment of the cost thereof.

(d) Requests for public information, for permission to inspect official records, or for copies of public records shall be made in writing to the director. The requests shall be handled with due regard for the dispatch of other public duties. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §91-2)

§12-10-63 Application for reopening of cases. (a) An application for reopening of a case pursuant to section 386-89, HRS, shall be in writing, shall state specifically the grounds upon which the application is based, and shall be served upon each party at the time of filing with the director.

(b) Whenever an application for reopening of a case is made, the director shall review the case file and may, by discretion, hear the interested parties. The director shall deny or grant a reopening and notify the parties in writing. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §386-89)

§12-10-64 Correction of records. In the absence of an appeal, clerical mistakes in a decision or order and errors arising from oversight or omission may be corrected by the director at any time or on the application of any party and after notice to each party in a case. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §91-2)

§12-10-65 Deposition. For the purpose of obtaining any matter, not privileged, which is relevant to the subject matter involved in the pending action, the director may, upon application and for good cause, order the taking of relevant testimony by deposition upon oral examination or written interrogatories, or by other means of discovery in the manner and effect prescribed by the Hawaii Rules of Civil Procedure. [Eff: 4/30/81; am 2/11/91] (Auth: HRS §386-72) (Imp: HRS §91-2(2))

§12-10-66 Subpoenas. (a) Subpoenas requiring the attendance of witnesses at a hearing before a hearings officer or for the taking of a deposition or the production of documentary evidence from any place within the State at any designated place of

hearing may be issued by the director or a duly authorized representative. The employer shall serve a claimant with a copy of a medical record subpoena unless the employer has previously obtained the claimant's authorization to examine the claimant's medical records. Should the claimant subpoena medical records, the employer shall be served a copy.

(b) The party subpoenaing the records shall provide these records within fifteen calendar days of their receipt to the employer, claimant, the special compensation fund if a joinder has been filed, or their representatives. These records shall be submitted by the party requesting the subpoena to the director within seven calendar days of the date of the "Notice of Hearing" or upon request by the director.

(c) A party who desires to enforce the director's subpoena shall seek enforcement from a court of competent jurisdiction. [Eff: 4/30/81; am 11/29/85; am 12/8/94] (Auth: HRS §386-72) (Imp: HRS §§371-6, 386-71)

§12-10-67 Witness fees. A subpoenaed witness shall be entitled to the same witness fee as in the case of a witness subpoenaed to testify before the circuit court. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §91-2)

§12-10-68 Posting and furnishing of information. (a) Each employer shall post and maintain in places readily accessible to employees a printed statement, "Notice to Employees", issued by the director.

(b) Every employer shall furnish within three working days of notice of the injury to each injured employee a copy of the brochure, "Highlights of the Hawaii Workers' Compensation Law", issued by the director. [Eff: 4/30/81; am 12/8/94] (Auth: HRS §386-72) (Imp: HRS §386-99)

§12-10-69 Attorney's fees. (a) Within ten calendar days following the filing of a final decision and order or upon the filing of a stipulation and settlement agreement, attorneys seeking approval of fees and costs claims pursuant to section 386-94, HRS, shall file with the department a request for approval of attorney's fees and costs setting forth a detailed breakdown of the time expended and costs incurred in each activity up to and including the date of the decision. The request shall be served on those parties against which the fees and costs claims are to be assessed. Any party objecting to approval of a request may file written objections no later than ten calendar days after service. No request for approval of attorney's fees and costs claims or agreement to pay attorney's fees and costs claims shall be valid until approved by the

director. The director may require additional details and justification of time billed or costs claims. The director shall disapprove requests which are not served properly or filed timely, except for good cause.

(b) In approving fee requests, the director may consider factors such as: the attorney's skill and experience in Hawaii workers' compensation matters; time and effort required by the complexity of the case; novelty and difficulty of issues; fees awarded in similar cases; benefits obtained for the claimant; hourly rate customarily awarded attorneys possessing similar skill and experience; and fees awarded in compensation cases usually come out of the employee's award.

(c) Costs claims such as delivery, typing, telephone (except for long distance calls), fax, and parking are considered part of the cost of doing business and shall not normally be approved unless properly justified. Claims such as photocopying and long distance telephone calls may be approved as costs if properly justified. [Eff: 12/17/82; am 2/11/91] (Auth: HRS §386-72) (Imp: HRS §386-94)

§12-10-70 Penalties and fines. All penalties and fines authorized by chapter 386 may be assessed by the director. The assessments shall be paid into the special compensation fund established under section 386-151, HRS. [Eff: 12/17/82] (Auth: HRS §386-72) (Imp: HRS §§386-31, 386-94, 386-95, 386-96, 386-97.5, 386-98, 386-123, 386-129, 386-151)

§12-10-71 Annotation of documents. All documents, correspondence, or other material filed with the director shall include as part of the heading:

- (1) The injured employee's full name;
 - (2) Department's case number;
 - (3) Date of accident;
 - (4) Name of the employer in whose employ the injury occurred; and
 - (5) If applicable, the name of the insurer or adjuster.
- [Eff: 11/29/85] (Auth: HRS §386-72) (Imp: HRS §§386-95, 386-96)

§12-10-72 Hearing notices. (a) All hearing notices shall be mailed to the last known address on record of the injured employee and the employer or the insurer or the adjuster of the employer. All parties shall notify the department in writing of any address changes within two weeks of the change. Hearing notices shall also be mailed to the employee's or employers designated representative provided a letter of representation is on file with the department. Requests for hearing notices by

other parties of interest shall be in writing, and approved by the injured employee, employer, or director for each injury.

(b) Should the injured employee or employee's representative, or the employer or employer's representative fail to appear at the hearing, the director may issue a decision based on the information on file. The decision shall be final unless appealed pursuant to section 386-87, HRS. [Eff: 11/29/85] (Auth: HRS §386-72) (Imp: HRS §386-86)

§12-10-73 Compensability denied or not accepted. (a) When an employer files a report of industrial injury, a copy of the report shall be concurrently furnished to the injured employee. When an employer denies compensability or indicates compensability is not accepted, the employer shall submit a written report to the director and the injured employee within thirty calendar days supporting the denial. Failure to submit a written report to support the denial shall indicate acceptance of the injury by the employer. The director may grant extensions for filing the employer's written report upon showing of good cause in writing.

(b) If upon review the director believes the injury should be accepted or is compensable, the director shall notify the employer and give the employer thirty calendar days to request a hearing. Should the employer fail to request a hearing, such action shall be considered a waiver of hearing and the director may issue a decision without hearing holding the injury compensable. The decision shall be final unless appealed pursuant to section 386-87, HRS.

(c) If upon review the director believes the denial of compensability is proper, the director shall notify the injured employee and give the injured employee an option to file a claim for industrial injury in accordance with chapter 386, HRS. [Eff: 11/29/85; am 12/8/94] (Auth: HRS §386-72) (Imp: HRS §§386-73, 386-86; 386-95)

§12-10-74 Consolidation of claims and joinder of parties.

(a) The director may order the joinder of additional parties, except as provided in section 12-10-33, necessary for the full adjudication of a claim. Motions to join additional parties shall be made prior to the filing of a request of hearing. Upon showing good cause, the director may permit joinder of additional parties beyond the request of hearing date.

(b) The director may order the consolidation of claims necessary for the full adjudication of the injured employee's rights and each employer's liability for compensation. Motions to consolidate several claims shall be made prior to the filing of a request of hearing. Upon showing good cause, the director

may permit consolidation of claims beyond the request of hearing date. [Eff: 11/29/85] (Auth: HRS §386-72) (Imp: HRS §386-86)

§12-10-75 Medical examination orders and reports. (a) Orders requiring the injured employee to appear for examination by the physician of the employer's choosing may be issued by the director.

(b) The employer shall submit a request in writing to the director and the injured employee twenty calendar days before the scheduled medical examination date. The request shall also include the purpose of the examination, justification for the order, the name of the physician, and time, date, and place of examination.

(c) The director, upon review of the case file and without necessity of hearing, and upon finding that the examination will assist in the expedient disposition of the case or in determining the need for or sufficiency of medical care or rehabilitation, shall issue a medical examination order. The order shall not be appealable and will inform the claimant that compensation may be suspended for failure to submit to the examination without good cause. The injured employee may be responsible for a reasonable no-show fee not to exceed \$250 charged by the physician.

(d) Reports for a medical examination by a physician chosen by the employer or employee not requiring a director's order shall be provided to all parties within fifteen calendar days after receipt and no later than fifteen calendar days prior to the scheduled date of hearing, whichever is sooner. Failure to provide the required copies may result in the director denying inclusion of the report in the director's decision. [Eff: 11/29/85; am 12/8/94] (Auth: HRS §386-72) (Imp: HRS §§386-79, 386-95)

§12-10-76 Liability for expenses incurred by injured employee required to submit to a medical examination. (a) Whenever an injured employee is ordered or requested to be present for examination by a physician or surgeon selected by the employer, as provided under section 386-79, HRS, the employer shall pay the reasonable costs and expenses incurred for travel, transportation, room and board, and actual wages lost by the injured employee. An employee who is receiving temporary total disability benefits shall not be entitled to wage loss.

(b) Whenever an injured employee is ordered or requested to be present for an examination by a physician or surgeon selected by the director, as provided under section 386-80, HRS, the costs, expenses, and wages as specified in subsection (a) shall be paid to the injured employee from the funds appropriated by the legislature for the use of the department. [Eff: 11/29/85]

(Auth: HRS §386-72) (Imp: HRS §§386-79, 386-80)

Historical Note

§12-10-76 is based substantially upon §12-13-5. [Eff: 8/13/71; am ren §12-13-5 1/1/81] (Auth: HRS §386-72) (Imp: HRS §§386-72, 386-79, 386-80)

§12-10-77 Filing of complaint. (a) Whenever a person has allegedly violated section 386-98, HRS, a written complaint, identifying the person charged and indicating the date and nature of the violation with related documentation, shall be filed with the director, provided that it is submitted within two years of the date of the alleged violation.

(b) The director shall send a copy of the complaint to the person against whom the complaint was filed and the person shall have thirty calendar days after the date the director sent the complaint by which to respond.

(c) The director or a duly appointed representative shall investigate the statements of the complainant and the person against whom the complaint has been filed and may, upon not less than twenty calendar days notice to the parties involved, hold a hearing pursuant to section 386-86, HRS. If the complaint is dismissed or no penalty is assessed, the director may issue a decision without a hearing.

(d) The decision of the director shall be sent to the respective parties in interest. If a violation of section 386-98, HRS, is found to have occurred, the director shall send a copy of the decision to the appropriate licensing boards.

(e) Requests for withdrawal of a complaint shall be submitted in writing. Upon receipt of this request, the director may dismiss the complaint and notify the person against whom the complaint has been filed.

(f) Any person aggrieved by a final decision of the director may file an appeal to the labor and industrial relations appeals board within twenty calendar days after a copy has been sent to each party. [Eff: 2/11/91; am 12/8/94] (Auth: HRS §386-72) (Imp: HRS §§386-94, 386-98)

§§12-10-78 to 12-10-90 (reserved)

SUBCHAPTER 4

SECURITY FOR COMPENSATION

§12-10-91 Security for payment of workers' compensation

benefits. Every employer required to secure payment of workers' compensation benefits under section 386-121(a)(1), HRS, shall cover its entire liability to all of its employees under one insurance policy. [Eff: 4/30/81; am 1/9/89] (Auth: HRS §386-72) (Imp: HRS §91-2)

§12-10-92 Notice of insurance. (a) Every employer shall insure that each employee in its employ is informed if it is a self-insurer for purposes of chapter 386, HRS, or if insured, of the name of its workers' compensation insurance carrier and general agent, as applicable.

(b) Beginning on July 1, 1989, a notice of insurance on a form prescribed by the director shall be signed by an authorized representative of the insurance carrier and shall contain the following certification:

"This certifies that all employees of the named employer will be provided all benefits as required by the Hawaii Workers' Compensation Law."

The notice of insurance shall be filed with the director within ten days from the effective date of the policy [Eff: 4/30/81; am 1/9/89; am 2/11/91] (Auth: HRS §386-72) (Imp: HRS §§91-2, 386-122)

§12-10-93 Cancellation of workers' compensation insurance. (a) A notice of intention to cancel an insurance contract under the terms of section 386-127, HRS, shall be in writing, served either personally or by registered or certified mail, return receipt requested, upon the employer or its representative.

(b) Upon completion of service of notice of intention to cancel an insurance contract, the insurance carrier shall notify the director in writing of the date of the service and of the date of cancellation. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §386-127)

§12-10-94 Self-insurance; application; duration; cancellation; revocation. (a) An employer desiring to maintain security for payment of compensation under section 386-121(a)(3), HRS, shall file an application with the director on a form provided for this purpose together with its most current audited annual financial statement.

(b) Where an applicant for self-insurance is a subsidiary and the subsidiary cannot submit an independent current audited annual financial statement, in lieu thereof an indemnity agreement approved as to form and content by the director shall

be executed by the parent corporation of the subsidiary and submitted with its application.

(c) Each self-insurance authorization shall be effective from date of issue to June 30 of each calendar year.

(d) A notice of intention to cancel self-insurance shall be submitted in writing to the director within at least thirty days prior to the effective date of cancellation.

(e) A self-insurance authorization may be revoked by the director for good cause upon notification in writing to the self-insurer. [Eff: 4/30/81] (Auth: HRS §386-72) (Imp: HRS §91-2)

§§12-10-95 to 12-10-99 (reserved)

SUBCHAPTER 5

MEDICAL STABILIZATION

§12-10-100 Determination of medical stabilization. (a) Preliminary determination of an injured employee's medical stability shall be made by the director upon request as provided in section 12-10-101, based upon a review of medical records and reports and other relevant evidence. The director may request from any party any additional information or consult with health care experts as the director deems necessary to determine the medical stability and ability to return to work of an injured employee.

(b) The director shall issue a preliminary decision upon determining an injured employee's medical condition has stabilized and the employee is unable to return to the employee's regular job.

(c) Any employee who has effected a compromise pursuant to section 386-78, HRS, shall not be entitled to a preliminary decision.

(d) A preliminary decision shall not be made when compensability of the injury is an unresolved issue unless both parties petition the director for a preliminary decision.

(e) Any injured employee who has elected not to participate in a vocational rehabilitation program shall be issued a preliminary decision upon reaching medical stabilization, and unless the review of medical reports and other relevant evidence indicate otherwise, the employee shall be deemed able to resume the employee's regular job. [Eff: 11/29/85] (Auth: HRS §386-72)(Imp: HRS §386-31)

§12-10-101 Request for stability review and determination.

(a) The employer shall notify the director and the injured

employee when the employer receives information indicating the injured employee may be medically stable. The employer shall identify all such correspondence with capital letters "MEDICAL STABILIZATION", shall explain the reasons for arriving at the conclusion, and attach all relevant documentation.

(b) The director, in the absence of reports from the employer, may declare medical stabilization after a review of the documents in file. [Eff: 11/29/85] (Auth: HRS §386-72) (Imp: HRS §386-31)

§12-10-102 Mailing of preliminary decision. A preliminary decision shall be mailed to the injured employee and the employer or the insurer or the adjuster of the employer. Preliminary decisions shall also be mailed to the employee's and employer's designated representative provided a letter of representation is on file with the department. Requests for preliminary decisions by other parties of interest shall be in writing and approved by the injured employee, employer, the respective designated representatives, or director for each preliminary decision. [Eff: 11/29/85] (Auth: HRS §386-72) (Imp: HRS §386-31)

§12-10-103 Requests for hearing. The preliminary decision shall be considered the final decision unless a request for hearing is filed with the director in writing not later than twenty calendar days after the date the preliminary decision is sent. The hearing shall be held in accordance with section 386-86, HRS, and the director shall issue a written decision based upon the evidence received. This decision shall be final unless appealed pursuant to section 386-87, HRS. [Eff: 11/29/85] (Auth: HRS §386-72)(Imp: HRS §§386-31, 386-86, 386-87)

§12-10-104 Vocational rehabilitation entitlements. (a) If the injured employee is medically stable and not permanently disabled, the injured employee shall not be referred for additional vocational rehabilitation services but may be permitted by the director to complete an approved vocational rehabilitation plan.

(b) If the injured employee is medically stable and is or may be permanently disabled, the director shall decide if the injured employee is entitled to vocational rehabilitation services. (Eff: 11/29/85] (Auth: HRS §386-72) (Imp: HRS §§386-25, 386-31)